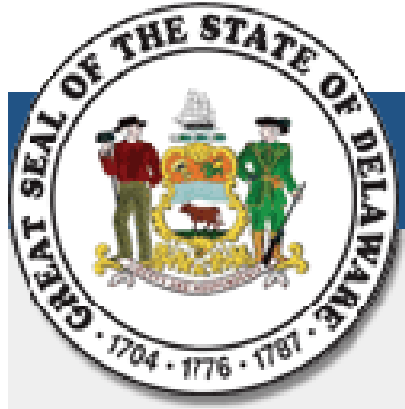


# State of Delaware



## Department of Justice

Carvel State Building  
820 N. French Street, 6th Floor  
Wilmington, Delaware 19801  
Telephone (302) 577-8400

### Delaware Department of Justice

#### Request for Proposals for

#### Civil Litigation Counsel in

*Office of the Commissioner of Baseball, et al. v. Markell, et al.*

**Bid Number: 08042009SBC**

**Bid Closing: August 11, 2009; 3:00 PM EST**

**REQUEST FOR PROPOSALS TO PROVIDE  
CIVIL LITIGATION COUNSEL  
ISSUED BY THE DEPARTMENT OF JUSTICE  
FOR THE STATE OF DELAWARE**

**Executive Summary**

The Department of Justice for the State of Delaware ("DOJ") is issuing this Request for Proposals ("RFP") to engage a law firm to act as Civil Litigation Counsel ("Civil Litigation Counsel") to assist in the defense of the Honorable Jack A. Markell, Governor of the State of Delaware, and Wayne Lemons, Director of the Delaware State Lottery Office (collectively, the "State") in the action titled *The Office of the Commissioner of Baseball, et al. v. Markell, et al.*, currently pending in the United States District Court for the District of Delaware, C.A. No. 09-538-GWS (the "Lawsuit").

The Lawsuit has been brought by the Office of the Commissioner of Baseball, the National Basketball Association, the National Collegiate Athletic Association, the National Football League, and the National Hockey League against Governor Markell and Director Lemons. The Lawsuit alleges that the State's proposed operation of a sports lottery will, in various respects, violate the Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701, *et seq.*, and Article II, Section 17 of the Delaware Constitution. The Lawsuit seeks declaratory relief, a preliminary and permanent injunction preventing the State from operating its proposed sports lottery, recovery of attorneys' fees, and such other relief as may be appropriate.

The State has already engaged Bouchard, Margules & Friedlander, P.A. ("BMF") to represent the State in the Lawsuit. The State is seeking to supplement the capability of BMF by engaging a second law firm to provide assistance in the defense in conjunction with BMF.

This RFP will define the scope of the work to be performed, the requirements the vendor ("Vendor") must address, the method for response and the administrative requirements that must be followed. The DOJ will advise potential Vendors of changes to any dates as may be necessary. The DOJ also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

**RFP Schedule**

ID	Date/Time	Activity
1	August 4, 2008	Request for Proposal issued and Posted on DOJ Web Site
2	<b>August 11, 2009; 3:00 pm ET</b>	<b>RFP Response due date</b>
3	August 12, 2009	Finalist selected
4	August 13, 2009	Contract awarded

The DOJ will advise potential Vendors of changes to any dates as may be necessary. The DOJ reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

All interested firms should submit 5 copies of their proposals ("Proposal") to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on August 11, 2009 ("Closing Date"). All timely Proposals become the property of the DOJ. Requests for extensions of the Closing Date will not be granted. Any Proposal, request for modification, or request for withdrawal received after 3:00 p.m. on the Closing Date is late and may not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

Cynthia L. Collins, Esq.  
State of Delaware  
Department of Justice  
Carvel State Building  
820 N. French Street, 6th Floor  
Wilmington, Delaware 19801  
Re: *Office of the Commissioner of Baseball, et al. v. Markell, et al.*

The cost of preparing Proposals will be borne solely by the offerors. Proposals shall to address all the questions posed by the DOJ in the order in which they appear in this request.

**RFP Designated Contact:**

Please submit all questions and requests for information to:

Cynthia L. Collins, Esq.  
Deputy Attorney General  
Carvel State Building  
820 N. French Street, 6th Floor  
Wilmington, Delaware 19801  
Direct Dial: (302) 577-8405  
Fax: (302) 577-6630  
Email: [Cynthia.Collins@state.de.us](mailto:Cynthia.Collins@state.de.us)

Questions should be addressed to the contact person to be received on or before August 7, 2009. Generally applicable questions submitted in a timely fashion and that do not include confidential or privileged information will be posted, along with answers, on the DOJ website.

## **1.0 GENERAL INFORMATION**

### **1.01 Project Scope and Objectives**

This RFP seeks to retain the services of Civil Litigation Counsel to assist BMF in defense of the Lawsuit and provide litigation support.

The Vendor should be prepared to offer the following services:

- A. General. The Vendor will be expected to familiarize itself with the State of Delaware Constitution, the Professional and Amateur Sports Protection Act, and the docket and procedural history of the Lawsuit without cost.
- B. Litigation Services. The Vendor shall assist in the defense of the Lawsuit and provide assistance to BMF, including, but not limited to, assistance in:
  - 1) the development of defenses and case management strategy;
  - 2) the drafting of motions, discovery, briefs and other legal documents;
  - 3) seeking, reviewing and defending discovery;
  - 4) conducting depositions, and attending meetings, hearings and other legal proceedings; and
  - 5) other litigation matters as needed.

### **1.02 Procedures**

Selected Civil Litigation Counsel will work closely with BMF, the Office of the Governor, the DOJ and the Delaware Lottery Office. All legal services are to be provided only at the request of BMF, the DOJ or the Office of the Governor. All advice is to be provided directly to the Office of the Governor, the DOJ and BMF, or individuals identified and/or designated by the Office of the Governor or the DOJ.

## **2.0 MINIMUM REQUIRED QUALIFICATIONS**

### **2.01 Experience and Reputation**

- A. The Vendor must have been in business at least five years; and

- B. The Vendor must designate, as a member of the team proposed for this representation, a lead attorney licensed to practice law within the State of Delaware, with seven or more years of experience.

## **2.02 Professional Liability Insurance**

The law firm shall agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$5 million. In order to satisfy this requirement, the law firm must:

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal either -
  - 1) A certificate of insurance or letter from its insurer demonstrating that the law firm meets this requirement, or
  - 2) A commitment letter or other evidence, satisfactory to the DOJ, that the law firm will have such coverage as of the date the Contract commences.

## **2.03 Law Firm's Capacity**

Each Vendor must demonstrate the capacity to perform the type of services needed by the DOJ described in Section 1.01 and 2.01 above. The law firm must be available to render services required under the Contract.

## **3.0 TECHNICAL PROPOSAL FORMAT**

The following information shall be provided in each proposal in the order listed below. A law firm is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the DOJ.

### **3.01 General**

All technical proposals shall be prepared with a concise description of the law firm's capabilities to satisfy the minimum qualifications of Section 1 and 2 above and the information requested under Section 3 below. Law firms should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

**3.02 Required Information**

The proposal shall contain the information described below.

A. Law Firm's Prior Experience

1. General Experience and Information:

- (i) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- (ii) Has your firm or an attorney in your firm's employ been disciplined or censured by any regulatory body within the last five years? If so, describe the principal facts.
- (iii) Within the last five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (iv) Does your firm represent any other states or governmental entities? If so, list the entity, and provide a contact and telephone number.
- (v) Please describe your firm's backup procedures in the event one or more attorneys assigned to the matter leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to the State, whose continuing status as such is an essential element of this contract.
- (vi) Describe your disaster recovery plan and facilities.

2. Specific Experience to Serve as Civil Litigation Counsel:

- (i) Provide a detailed description of the Vendor's experience in proceedings in federal courts and in the United States District Court for the District of Delaware. Provide a description of comparable or illustrative matters.

- (ii) Provide a detailed description of the Vendor's experience involving claims based on a federal statutory regime such as the Professional and Amateur Sports Protection Act.
  - (iii) Provide a detailed description of the Vendor's capabilities with respect to federal civil discovery.
- B. Vendor's Team (Specific Individuals Responsible for Performance of Contract). Provide a detailed description of the team that would provide services identified in this RFP and include the following information:
  - 1. The identity and resumes detailing the experience of the principal members of the proposed team, attached to the Proposal as Appendix A.
  - 2. The courts in which each is admitted to practice, the year of admission, and the location of the principal place or places of business, if not included on resume.
- C. Conflicts of Interest.
  - 1. In general. If a conflict of interest arises, the Vendor should be willing to continue to represent the State and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The State may entertain a request for a waiver of a law firm's representation of a transactional nature, but does not expect to waive other conflicts. The State reserves the right, in its sole discretion, to select another Vendor to work on this matter if a conflict is not resolved to its satisfaction.
  - 2. Each Vendor shall identify any conflicts of interest which may arise with the State and BMF if the Vendor serves as Civil Litigation Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys named on the contract but also from representation of parties involved in the transactions or other matters involving the State of Delaware by any other member of the firm, regardless of whether that attorney is in the same office or a different office of the firm. The Vendor shall provide a copy of its written conflicts policy or explain that there is no written policy.

## **4.0 PRICE PROPOSAL FORMAT**

### **4.01 Billing Rates**

Please provide:

- A. Proposed billing rates for all attorneys assigned to represent the State pursuant to this RFP; and
- B. Proposed billing rates for all para-professionals assigned to represent the State pursuant to this RFP;

Please note that no compensation will be permitted for the services of law clerks and law school graduates not admitted to practice. The successful Vendor shall be required to comply with the DOJ Outside Counsel Billing Policy.

### **4.02 Alternative Pricing Proposals**

Although each Vendor is required to submit a price proposal containing the information set forth in Part 4.0, the DOJ will also accept proposals for alternative billing arrangements, that enhance the value and efficiency of the services to be provided. The Vendor may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

## **5.0 EVALUATION OF PROPOSALS**

The State shall evaluate the proposals. In doing so, the State expects to receive input and comments from BMF. During the evaluation process, the State may, at its discretion, request any or all firms provide additional information, as needed by the State.

### **5.01 Selection Criteria**

The selection of the firm or firms to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to the DOJ in which technical factors will be considered significantly more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance:

- A. Experience of the firm and the individual attorneys on the team;
- B. Specific experience of the firm and the individual attorneys on the team in the defense of complex matters pending in the federal courts, and/or involving claims or requests for relief similar to those in the alleged in the Lawsuit;



- C. Demonstrated ability to perform the services referenced in the Project Scope and Objectives;
- D. Capability to work with and supplement the capacities of BMF;
- E. Billing rates and fee arrangements; and
- F. References and recommendations of other clients.

### **5.02 Contract Negotiation**

The DOJ intends on opening negotiations with Vendors that have a reasonable likelihood of being awarded a contract based on the proposals that are submitted. Negotiations will focus on any technical deficiencies in proposals, as well as cost and pricing issues.

A written contract with the law firm(s) selected will be required, which must be approved by the Attorney General of the State of Delaware and the Governor of the State of Delaware pursuant to 29 *Del. C.* § 2507.

### **5.03 Contract Award**

The DOJ reserves the right to award all, part, or none of this contract and may award contracts to multiple law firms if deemed appropriate and desirable.